U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEITH A. CUTLER and U.S. POSTAL SERVICE,
POST OFFICE, Garland, TX

Docket No. 00-2041; Submitted on the Record;
Issued September 10, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability beginning December 11, 1998 causally related to his accepted July 2, 1990 employment injury.

The Board has duly reviewed the case record in this appeal and finds that this case is not in posture for decision.

On July 6, 1990 appellant, then a 33-year-old carrier, filed a traumatic injury claim alleging that on July 2, 1990 he injured his neck and back when he was hit in the rear by a commercial dump truck. Appellant stopped work on July 3, 1990.

The Office of Workers' Compensation Programs accepted appellant's claim for cervical, lumbar and thoracic strains.

Appellant accepted the employing establishment's offer to perform the duties of a modified carrier and he returned to work on February 4, 1991 for four hours a day.

On January 2, 1999 appellant filed a claim alleging that he sustained a recurrence of disability on December 11, 1998. On January 15, 1999 appellant filed another claim alleging that he sustained a recurrence of disability on December 15, 1998.[1]

By letter dated March 4, 1999, the Office advised appellant to submit factual and medical evidence supportive of his claims.

In a decision dated April 23, 1999, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on December 11, 1998 causally related to his July 2, 1990 employment injury. In a May 21, 1999 letter, appellant requested an

[1] Appellant previously had filed several claims alleging that he sustained a recurrence of disability causally related to his accepted July 2, 1990 employment injury.

oral hearing. By decision dated March 24, 2000, the hearing representative affirmed the Office's decision.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a full-time light-duty position or the medical evidence of record establishes that he can perform the duties of such a position, to be entitled to further compensation the employee has the burden to establish by the weight of the substantial, reliable and probative evidence that he cannot continue to perform such light-duty, full-time work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[2]

In this case, appellant has alleged that the claimed recurrence of disability was caused by a change in the nature or extent of the light-duty job requirements. Specifically, appellant has alleged that, on the day before his alleged recurrence, the temperature had been 70 or 75 degrees and sunny. Appellant stated that it was a mild winter day. On the day of his alleged recurrence, appellant alleged that the temperature had dropped about 30 degrees, and that the weather was windy and rainy. The employing establishment's job offer did not indicate that changes in weather conditions were included in appellant's light-duty job requirements. In fact, the offer indicated that restrictions to heat, cold, dampness, height and temperature changes were not applicable to appellant. Therefore, appellant has failed to establish a change in the nature or extent of his light-duty job requirements.

In support of his claim that the accepted conditions of cervical, lumbar and thoracic strains have materially changed or worsened since his return to light-duty work on February 4, 1991, appellant submitted a May 11, 1999 report from Dr. Richard A. Marks, a Board-certified orthopedic surgeon and his treating physician, who stated:

> "I am writing regarding [appellant], and specifically regarding his most recent flare-up of pain. This flare-up, as have others in the past, is due to the underlying pathology in the original injury. [Appellant] has not had any other physical trauma to the back to cause such flare-up including no new injury and no athletic trauma."

Similarly, in his November 4, 1999 report, Dr. Marks stated:

> "I am writing regarding [appellant], and specifically regarding his most recent flare-up of pain. I believe that this flare-up as have others in the past been due to the underlying spinal pathology. As stated in my examination notes of November 10, 1998, [appellant] had been experiencing increasing thoracic pain for approximately six months previously, and had expressed concern regarding the gradual worsening of his thoracic symptoms. [Appellant] had noted that significant changes in temperature and/or barometric pressure, such as raining an entire day with [appellant] out delivering mail that same day are known to cause flare-ups in inflammatory condition in general and in his own symptom complex in particular. I believe that his most recent flare-up was not due to any physical

[2] *See Terry R. Hedman*, 38 ECAB 222, 227 (1986).

trauma to the back or due to any new injury or athletic trauma. Rather, this most recent flare-up was due to a worsening condition of the same underlying pathology which had been previously present."

Proceedings under the Federal Employees' Compensation Act[3] are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[4] Dr. Marks reports are insufficient to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his current back condition was caused by the July 2, 1990 employment injury because they failed to provide any medical rationale explaining how or why appellant's current back condition was caused by the July 2, 1990 employment injury. However, they raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[5]

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's current back condition was caused by the accepted July 2, 1990 employment injury. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The March 24, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside, and the case is remanded for further consideration consistent with this decision.

Dated, Washington, DC
September 10, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

[3] 5 U.S.C. §§ 8101-8193.

[4] *William J. Cantrell*, 34 ECAB 1223 (1983).

[5] *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).